

L91AALAVC

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 LAVVAN, INC.,

4 Plaintiff,

5 v.

20 CV 7386 (JPO)

6 AMYRIS, INC.,

7 Defendant.

8 -----x
9 New York, N.Y.
September 1, 2021
3:00 p.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13 APPEARANCES

14 CYRULNIK FATTARUSO, LLP
15 Attorneys for Plaintiff LAVVAN
16 BY: JASON C. CYRULNIK
PAUL FATTARUSO
17 IAN DUMAIN
EVELYN FRUCHTER

18 GIBSON DUNN & CRUTCHER, LLP
19 Attorneys for Defendant Amyris
20 BY: MICHAEL D. CELIO
MICHAEL B. CARLINSKY
21 H. MARK LYON
DAVID MEYER

L91AALAVC

Conference

1 (Case called)

2 THE COURT: Good afternoon.

3 This is Judge Oetken. I'd like to start by reminding
4 everyone to, please, say your name each time you speak so that
5 the court reporter can take everything down.

6 This is a conference in LAVVAN, L-A-V-V-A-N, versus
7 Amyris, A-M-Y-R-I-S, 20 CV 7386.

8 Starting with the plaintiff's counsel, I'd like
9 counsel to, please, state your name for the record.

10 MR. CYRULNIK: Good afternoon, your Honor.

11 This is Jason Cyrulnik, from Cyrulnik LLP, on behalf
12 of plaintiff.

13 THE COURT: Good afternoon.

14 MR. FATTARUSO: Hello.

15 This is Paul Fattarusso, also on behalf of plaintiff.

16 THE COURT: Good afternoon.

17 MR. DUMAIN: Ian Dumain, also from Cyrulnik Fattarusso,
18 for the plaintiff.

19 MS. FRUCHTER: Evelyn Fruchter, from Cyrulnik
20 Fattarusso, also for the plaintiff.

21 MR. CYRULNIK: That's everyone from the plaintiff's
22 side.

23 THE COURT: All right. Defense counsel?

24 MR. CELIO: Good afternoon, your Honor.

25 Michael Celio, C-E-L-I-O, of Gibson Dunn & Crutcher

L91AALAVC

Conference

1 for Amyris.

2 THE COURT: Good afternoon.

3 MR. LYON: Also from Gibson Dunn, your Honor, mark
4 Lyon, L-Y-O-N, for Amyris.

5 THE COURT: Good afternoon.

6 MR. CARLINSKY: Michael Carlinsky, from Quinn Emanuel
7 for the defendant, as well.

8 THE COURT: Good afternoon.

9 Anyone else?

10 MR. MEYER: Good afternoon, your Honor.

11 David Meyer, also from Quinn, for the defendant.

12 THE COURT: Anyone else?

13 MR. CELIO: That should be everyone, your Honor.

14 THE COURT: Okay. Thank you all for joining.

15 Again, this is Judge Oetken and after my ruling on the
16 defendant's motion to compel arbitration and motion to dismiss
17 I scheduled a date for defendant to answer the complaint, which
18 I believe defendant has now done on August 23. In the
19 meanwhile a notice of appeal was filed and there is right to
20 appeal under the statute, direct appeal to the Second Circuit
21 from a motion denying an order denying a motion to compel
22 arbitration.

23 In the meantime I do have a proposed case management
24 plan which I believe is agreed upon to the extent I do not
25 grant defendant's motion to stay discovery. So, really, I just

1 wanted to do two things, make sure I understand everyone's
2 position, and hear a little bit about the motion to stay
3 discovery -- I'm sorry -- to stay the case pending the appeal.
4 And second, if I do decide to go forward with discovery in this
5 matter and not stay the case pending appeal, just to see if the
6 parties agree on the date. I see that you attached additional
7 deadlines based on, I guess based on the Court's local patent
8 rules for things relating to patent infringement claims.

9 So, let me start -- I mean, I really have a few
10 questions. I guess, I'll start with plaintiff's counsel,
11 whoever wants to speak.

12 I want to know a little bit more about the pending
13 arbitration. Obviously, I held what I held in the decision. I
14 determined that, basically, it's very clear in the agreement
15 that to the extent something is; an intellectual property
16 claim, it's not subject to arbitration. And it's not even
17 within the realm of the arbitrator gets to decide is within the
18 scope of the arbitration. But there is this arbitration.
19 Forget regarding contract claims. I don't really know much
20 about it other than what defendant said in its briefs.

21 Is it fundamentally true that everything, business is
22 teed up to be decided in the arbitration is a bunch of contract
23 claims, is basically going to answer the questions about
24 infringement of patent and trade secrets? Or is there some
25 daylight there that's not going to be resolved as a practical

1 matter?

2 MR. CYRULNIK: Thank you, your Honor. This is Jason
3 Cyrulnik. I'll start and I'll also invite Ian Dumain to also
4 weigh in.

5 I think the short answer to your Honor's question is
6 that there is some daylight. The arbitration does concern
7 interpretation of certain contractual provisions. And
8 obviously, that there's fact finding that's going to go on
9 there in connection with Amyris's various alleged breaches.
10 And so, I think we would all agree that depending on the
11 various defenses that Amyris ultimately settles on in the
12 arbitration, there are going to be issues that are teed up in
13 the arbitration that will likely have implications on the scope
14 of the claims here and that will potentially play into the
15 Court's consideration of some of the issues.

16 That said, they are a very different set of claims, as
17 the Court recognized, and the as the parties recognize in
18 setting up with the contractual provision the way they did.
19 And I think there is daylight between the two, not only in
20 terms of the relief sought, but also in terms of the issues
21 that need to be, that require discovery and that need to be
22 decided by the Court in this case and by the tribunal in the
23 case of the arbitration. So, I think depending on how the
24 timing plays out, I could certainly, candidly see some issues
25 where whether your Honor makes a decision or whether the

1 tribunal makes a decision where there will be potential
2 collateral estoppel on issues that plaintiffs have (inaudible)
3 the claims. The arbitration hearing is not scheduled until the
4 very end of October, beginning of November of 2022. And so, I
5 think depending on how things go with respect to each set of
6 claims, it would be that there likely would be some issues that
7 claims in both cases where whichever fact-finder makes that
8 decision or whether a joinder or tribunal makes decisions about
9 certain issues they will be brought to the attention of the
10 other tribunal. But practically, we think that there's
11 daylight between the claims that they are not only in terms of
12 the relief sought but in terms of some of the issues that are
13 being litigated.

14 THE COURT: I'll give defendants a chance to respond
15 to this as well. But while I have you, Mr. Cyrulnik, you said
16 October, November 2022 for the hearing. What is the discovery
17 look like? I'm not, I don't remember the rules of ICC
18 arbitration and whether they provide for depositions. You
19 know, is it sort of comparable document production to a federal
20 court litigation? Are there depositions? Is there a schedule
21 yet?

22 MR. CYRULNIK: Yes, your Honor. There is a schedule
23 in place. I am happy to either share it with your Honor or to
24 walk through at a high level to the extent that level of detail
25 would be helpful. But there is a schedule in place. We're in

1 the middle of document discovery. I think the initial requests
2 were served. There's a tiered process there whether it's a
3 voluntary production and disputed issues. On the document
4 production front, there's a tribunal. But we certainly, think
5 that there's a lot of discovery that's going to take place
6 there on the issue that pertains to those claims. I think the
7 parties have agreed, and this was presented at the tribunal at
8 the outset when we were setting the schedule, I think Amyris's
9 position was why don't we hold off on the arbitration setting
10 some schedule until we find out what your Honor thinks about
11 some patent claims. I think the decision by the tribunal was
12 we'll wait for Judge Oetken to rule. We'll see what Judge
13 Oetken says, but right now we're going to move forward with
14 discovery that's pertinent to these claims in this tribunal.
15 And you know, if something changes about the scope of the
16 arbitration, we'll then address the implication of the expanded
17 scope at that point in time. So the intention was to always
18 proceed with the discovery on the claims that are arbitrable on
19 the timeline a (inaudible) in the ICC and to proceed with
20 patent related discovery in this court. And so, I think we do
21 expect there to be depositions following the exchange of
22 document requests, document productions and the evolution of
23 received document production issues.

24 We have not yet delved on exactly what would take
25 place following the inclusion of document discovery, but we

1 invite these depositions depending on how those issues are
2 resolved on the document front. There are witness statements
3 that largely, they are the function of getting the party's
4 position and the witness positions.

5 THE COURT: All right. Thank you.

6 Mr. Celio or anyone else who wants to speak for
7 defendant?

8 MR. CELIO: Yes. I can answer the question, is there
9 daylight, much more succinctly. If we win, there is no
10 daylight. We believe if we win in the arbitration, this case
11 is over because we will, we hope, have proved that LAVVAN does
12 not have the rights to use our intellectual property the way
13 that they say they want to. Now, if we are not successful,
14 there may be some daylight in that we may have some additional
15 patent based defenses in terms of whether we are actually
16 practicing any of those things, whether there's actually any
17 damages. But the answer is quite simple. We think there is
18 very little daylight because we hope and expect we will
19 prevail. So, that's a much simpler answer, I think.

20 In terms of what discovery looks like, yes, discovery,
21 I actually agree with most of what Mr. Cyrulnik said.
22 Discovery is already ongoing. We have voluntarily produced a
23 bunch of documents. A lot more will go out. You know, in the
24 hearings, only thirteen months away at this point, thirteen and
25 a half months away, I guess, maybe. so, they will have the

1 opportunity to examine our witnesses and we'll have the
2 opportunity to examine their witnesses. Under the agreed
3 schedule that's, I think it's six months. I think it's not
4 until March of next year that they're even scheduled to tell us
5 what they're infringement contentions are. So, I actually
6 think that the arbitration is going to be, I don't know,
7 wrapped up. I mean, obviously, the panel gets to decide when
8 it decides. But we will be substantially along in that case
9 before we really get to the meat of the dispute before your
10 Honor. And I think that that points for some equitable reasons
11 towards what we have been asking the Court to do here.

12 THE COURT: Yeah. I mean, I see that, but I also, on
13 the other hand, I am wondering about this sort of prejudice
14 irreparable injuries/prejudice argument you've made. And I
15 wonder if you are going to be doing sort of the same discovery
16 about all of the contract stuff and business relationship and
17 who's researching what. You're doing it sort of for purposes
18 of this case. Aren't you doing in any way for the purpose of
19 the arbitration?

20 MR. CELIO: So, I think there's overlap but it's not
21 precisely the same, your Honor. It's not precisely the same
22 because we would not be getting into in the arbitration the
23 issues I said that won't come up if we prevail. For example,
24 are we practicing the patents? What those patents mean?
25 Obviously, there will not be unless there's a decision by the

L91AALAVC

Conference

1 Second Circuit contrary to what your Honor held, we will not be
2 having the equivalent of a Markman there. So, the prejudice,
3 there's an entire set of disputes that overlap and then there's
4 additional disputes that we believe we never have to get to and
5 should never have to get to.

6 THE COURT: Right. I am cognizant of the fact that
7 this is a weird case in that -- and this was in the papers
8 before me earlier -- the parties are owned by Amyris. So,
9 Amyris would be in the awkward position of not wanting to make
10 invalidity type arguments about its own patent and the only
11 infringement exists in the world where there was exclusive
12 license that was infringed of your own patent, i.e., your
13 client.

14 So, I realize that that's a little odd. Is it your
15 position that the exclusive license granted to LAVVAN actually
16 permitted Amyris to keep doing things, notwithstanding, the
17 exclusive nature of it or that Amyris was limited but only to
18 the extent of the agreement.

19 MR. CELIO: So, there's a dispute about the field.
20 There are both signed kinds of disputes. There's a dispute
21 about the right that LAVVAN had to terminate this. They were
22 the ones to terminate the agreement. And whether they did that
23 for cause as they contend or not for cause, had a significant
24 impact. Even if they're right on that question, there is then
25 the question as to who had what field. There are two fields.

L91AALAVC

Conference

1 There's the LAVVAN field and the Amyris field. We believe
2 we're right on both points. We believe that they did have the
3 right to terminate the contract but we also believe we are
4 operating within our proper fields.

5 THE COURT: OK. Did someone else want to add
6 something?

7 MR. CYRULNIK: Jacob Cyrulnik.

8 I want to address a couple of points that came up.

9 THE COURT: Sure.

10 MR. CYRULNIK: Just a couple of points. First, on the
11 series of questions that your Honor asked about the overlap and
12 Mr. Celio's response that the patent -- discovery would not go
13 forward if they were to prevail in the arbitration. I think, I
14 don't think this is lost on the Court, but just to put a fine
15 point on it, if there's no world in which the discovery that
16 Mr. Celio was describing discovery that is specific to the IP
17 claims and that includes not only the patent claims but also
18 the trade secret claims, which I'll address in a moment, but
19 that discovery needs to go forward. It's just a question of
20 whether it goes forward in the SDNY as your Honor has ruled and
21 the case (Inaudible) or whether the claims are arbitral in
22 which case it would be going forward in the IP. There is no
23 provision in the contract. And I don't think my friends on the
24 other side would claim otherwise in any papers that we saw that
25 IP claims follow only from the completion of resolution of

1 claims concerning contractual violation or otherwise. And so,
2 I think our understanding of Amyris's position is that they had
3 moved to compel arbitration that these claims would proceed
4 simultaneously just like they would be proceedings now, but
5 they wanted them all to be proceeding in ICC. And, obviously,
6 that discovery would not then be limited to the claims that we
7 currently have in the arbitration but would include the
8 discovery on the patent and trade secret claims.

9 So, I don't think from our perspective there was any
10 material prejudice here. The prejudice that I heard Mr. Celio
11 articulate was that, well, we have discovery on claims that we
12 think could be resolved if we prevail in the underlying claims
13 in the arbitration. I think our response to that would be no
14 under, the plaintiff's position is that that discovery would
15 need to go forward anyway just in a different form. So, the
16 question of prejudice would really reduce to whether or not,
17 not whether in discovery and related to pretrial work needs to
18 go forward on these claims at all, but whether there's a
19 prejudice resulting from the fact that it goes forward before
20 your Honor rather than in the ICC.

21 Just to note, in addition to the patent claim, the IP
22 claims that go forward in your Honor's courtroom include trade
23 secret claims including trade secrets that belong to LAVVAN
24 indisputably. Obviously, there will be whatever defenses
25 Amyris runs with on why they are not violating those trade

1 secrets. But practically speaking, the contractual issues that
2 Mr. Celio referenced with respect to the (inaudible) and your
3 Honor referenced with respect to the exclusive rights and it
4 was granted and so what LAVVAN put forth would not bear on the
5 trade secrets that Amyris is currently using from LAVVAN in
6 pursuing basically the very venture that they had agreed to
7 pursue through us and just doing it on their own now and
8 shutting us out.

9 THE COURT: So, you're sort of carving out the trade
10 secrets saying that that is something that would not, that if
11 Amyris's position prevailed entirely in the litigation as to
12 the contract, you're saying that the patent claims admittedly
13 would go away but not the trade secrets claim you are talking
14 about?

15 MR. CYRULNIK: The second piece certainly is our
16 position that the trade secret claims would go forward.
17 Obviously, at one point we're talking about the hypothetical
18 world in which Amyris prevails on everything, I suppose they'll
19 be taking certain positions that in theory might implicate our
20 trade secrets. But practically speaking, the core issue
21 referenced earlier today in terms of the scope of the exclusive
22 license and those issues, they don't bear on the LAVVAN trade
23 secrets that didn't, that were not a function of any exclusive
24 license that was granted to us but there were instead taking
25 what we brought to the table on the cannabinoid side that we

1 allege Amyris is currently using as they pursue this venture on
2 their own.

3 So, the shorter answer to that would have been, yes,
4 we think among the rays of daylight that I was referring to
5 earlier, it's certainly the trade secret claims, we think would
6 not be directly impacted by the resolution of the contractual
7 issues that are before the ICC. And the patent claims I think
8 we'd have to, it would depend on how precisely the tribunal
9 resolved those claims. Obviously, if we prevailed, the patent
10 claims go forward full force. If there's a world in which they
11 were restricted or they're various alternatives interpretations
12 that Amyris is lobbying the ICC to consider that are adopted
13 and it would depend on the scope of the ICC tribunal's
14 interpretation of various issues that could have implications
15 for the scope of our other infringement claim.

16 THE COURT: OK. Understood.

17 MR. CELIO: If I could just respond with your Honor's
18 indulgence very briefly to the trade secret points?

19 THE COURT: Sure.

20 MR. CELIO: Two points. One is we don't actually know
21 yet what these trade secrets are and we've built in the
22 schedule a time for them to define what those trade secrets
23 are. My client doesn't know what they are and we're very
24 curious to find out what it is. We're being accused of
25 infringing.

1 I would say second, as a practical matter while it may
2 be true that theoretically those claims could go forward, I
3 don't think that in the real world that would ever happen in
4 the hypothetical world in which we prevailed. I think those
5 claims are in this case the tail of the dog or, maybe even
6 meaning no disrespect, the fleas on the tail of the dog. This
7 case resolves then we win in the arbitration. I really believe
8 that. There may be some theoretical legal argument to the
9 contrary but I really, I think it all just turns on whether
10 there's a breach here.

11 THE COURT: I get your point. I was going to say, I
12 do think this is a situation, even though I read the agreement
13 as I did, it does seem like, I have had this several times in
14 copyright cases where there's a license and there's a question
15 of how far the license goes and as soon as the defendant
16 exceeds the license they're not only breaching the contract but
17 infringing copyright. In those situations I've often stayed
18 discovery on summary judgment motion or a 12C motion on the
19 issue of the contract for the license because it's inefficient
20 for a bunch of IP discovery when it all turns on the contract.

21 As to the patent claims, this feels a little bit like
22 that and that's why it does feel a little more efficient to
23 have a tribunal rule on the contract claims because as a
24 practical matter they certainly seem like they might well
25 resolve the patent claim. Although, Mr. Celio, I think

1 Mr. Cyrulnik makes a good point. If there's an October 2022
2 hearing it's not like the arbitration panel is going to stay
3 discovery as I have. If I put this, if I had granted your
4 motion, you would be doing full-blown tax discovery in the
5 arbitration, right

6 MR. CELIO: Yes, your Honor, that's right. And that,
7 frankly, is more efficient and fine. There are considerable
8 cost savings. Just speaking not only as a legal question but
9 just as to the equitable question. There are considerable cost
10 savings to doing it once and doing it in one place. And the
11 arbitral panel, as we put in other motion to stay, actually
12 resolved space in the schedule for that potentially to happen.
13 We are still open to that happening by agreement. I understand
14 my friend on the other side is not interested in that but we'd
15 still be willing to do that by agreement.

16 THE COURT: Let me ask you, Mr. Cyrulnik, just in
17 terms of your client's money and having this proceeding stayed
18 or partially stayed in my court as they request or going
19 forward, going forward in my court, maybe the trade secret only
20 goes forward and then having an appeal that Mr. Celio filed in
21 the Second Circuit and then also an arbitration, doesn't that
22 seem wasteful? Why don't you just agree to have the
23 arbitration panel decide everything?

24 MR. CYRULNIK: I appreciate the question, your Honor.
25 I think my answer would consist in two parts. Look, as a

1 practical matter, I think what I am hearing Mr. Celio to be
2 advocating for is a result that I think it would be somewhat
3 sui generis and a function of the procedural posture here. If
4 everything proceeding in the arbitration, we would be having a
5 discovery on everything. And so, it seems like the position
6 that Amyris is asking that we should somehow because we
7 prevailed in with respect to the motion to compel arbitration,
8 we should now be in a position that never would have been
9 contemplated by the parties which would effectively stay
10 discovery of all patent and trade secret claims pending
11 resolution of any contractual issues.

12 The answer to your Honor's -- question is, this is our
13 client's entire business. They invested everything in this
14 venture. They put everything on the line. They hired world
15 class teams. This was an absolutely mammoth undertaking and
16 they put everything into it and right now they're watching
17 everyday. I exaggerate by saying everyday, but almost on a
18 regular basis they are watching Amyris publicly announce
19 additional undertakings and accomplishments on the very venture
20 that they are supposed to be doing with LAVVAN as LAVVAN sits
21 here reading about those things and being shut out with their
22 intellectual property being used and Amyris benefiting from
23 that which is public announcement on a regular basis. And this
24 is an emerging market with a lot of promise and my clients have
25 a lot to contribute in that regard. That's why they were one

1 of the reasons why this partnership was poised for success.
2 And I think our position is, notwithstanding, any potential
3 additional expenses, although, I don't think it's particularly
4 inefficient -- for the reasons I'll get to in just a moment --
5 but, notwithstanding, the expense involved, this litigation and
6 resolution of these claims is critical because there are a lot
7 of people who invested a lot of time, money and their lives
8 into this venture which Amyris has basically taken away. This
9 is our version of the facts. But Amyris has taken away from
10 LAVVAN and the company is literally just sitting here waiting.
11 The only recourse it has is through the legal process, be it
12 (inaudible) or through the arbitration.

13 So, it is an investment and it is unfortunate that
14 Amyris effectively decided to take my client's initial
15 investment in all it's done and just proceed with the venture
16 but that's the situation we find ourselves in and that's an
17 expeditious resolution of the various pieces, the way Amyris
18 has done wrong in our view. It's critical to many, many people
19 and families and the like. So, that's why the (inaudible).

20 In terms of the inefficiencies, I think as a practical
21 matter, we just don't view it as particularly inefficient. we
22 have no interest in duplicating discovery. We have no interest
23 in getting discovery from each of our claims. That discovery,
24 we're happy to (inaudible). Practically speaking we are going
25 to get the documents. If the document requests that are

1 particular to the patent claims or the trade secret claims,
2 we're going to serve those. We don't need to get documents
3 that we also got in the ICC we produced. And I think there are
4 ways to do this efficiently. I've litigated in two different
5 forums and circumstances in ways that are efficient as long as
6 the parties and particularly counsel are committed to trying to
7 streamline the process. But I think when you tear through the
8 sort of spatial appeal of proceeding in one place, I think
9 there really is not that much duplication or ways that we
10 foresee at all. There may be some differential in terms of the
11 scope of available discovery. I think there's a lot of overlap
12 but there may be some difference and the differences in which
13 where we will get discovery, we're entitled to. But we can
14 streamline this process in a way where we get all the
15 information together during this, the upcoming months, that
16 period. And we are all poised to go forward on each of our
17 claims and in the proper forum so that we don't further delay
18 the right that our client has if we're able to prevail on our
19 claims.

20 THE COURT: Okay. Well, Mr. Celio, I probably should
21 give you a chance to respond to that. There are points
22 Mr. Cyrulnik made about the merits. I have not gone into the
23 merits of the business dispute here. I'm sure there are strong
24 feelings on both sides but is there anything you would like to
25 respond to.

L91AALAVC

Conference

1 MR. CELIO: Thank you, your Honor.

2 The only thing I'd like to say is this desire to move
3 quickly that I hear counsel making so strenuously, so
4 passionately, is in some tension with the schedule that they
5 have proposed and that we agreed to and that we have submitted
6 directly to your Honor, we can get all of this done and we can
7 have this entire case submitted to a panel in 13 and a half/14
8 months. And under the schedule that we've jointly provided to
9 your Honor, we aren't even going to find out what the
10 infringement contentions are for half of the year. So, I think
11 the efficiently point really speaks for itself. And again,
12 we'd have to do it by consent in light of your Honor's ruling.

13 But I want to state that it's our position, we've said
14 it many, many times that if we want to do this quickly and we
15 want to do it once and we want to do it more in court, we would
16 agree to have the entire thing in front of the arbitral
17 tribunal who exists already, who knows about this case and who
18 said they would take it if it's brought to them.

19 MR. CYRULNIK: Your Honor, if I could make one point
20 on that?

21 I don't think that's accurate. the Schedule that we
22 have in the ICC is predicated on there being only the contract
23 related claims in the ICC and the patent claims not being put
24 in there. In fact the initial conferences as I think I alluded
25 to at the outset, Amyris had suggested either staying that case

L91AALAVC

Conference

1 pending this Court's resolution or building in different
2 scheduling deadlines on the chance that patent claims would go
3 into the ICC arbitration. That would obviously be a much
4 broader case. And that existing schedule does not at all
5 contemplate that and expressly would need to be amended
6 materially if those claims were brought into this. So, I don't
7 think there's any real argument that this case could be
8 completed in 14 months with the patent claims (inaudible)
9 arbitration.

10 THE COURT: Okay.

11 MR. CELIO: I respectfully disagree and I am
12 committing to trying to get that done. We've become fast
13 friends and speak frequently because of all these matters. So,
14 I'm going to speak to him later today about some other matters.
15 I'm happy to talk to him again about what specifically the
16 proposal is. But I'd certainly, be very open to moving this
17 one forward.

18 THE COURT: Okay. Why don't you confer about it and
19 present it to me?

20 MR. CELIO: Very good. Thank you, your Honor.

21 UNIDENTIFIED MALE VOICE: Your Honor, it would require
22 work but I think that I think the one place there is common
23 ground between our desire to resolve this dispute, to move it
24 forward and I think Amyris's position is a lot clearer and a
25 lot simpler and we can phase it in the ICC. There's a lot of

1 things that experienced counsel like we have in this case can
2 do, and I think it just makes a ton more sense to do it in one
3 place rather than in three.

4 THE COURT: It's a tough call but I've decided to stay
5 the case. Part of that is, obviously, it's applying the
6 factors that you all agree and it's also in light of the fact
7 that the arbitration statute provides for a direct appeal from
8 a motion or an order denying to compel arbitration and the fact
9 that there are substantial questions going to the merits. I've
10 read the contract as fair and clear but I am also cognizant as
11 I've said of fact that these particular patent claims which are
12 driving, I think driving the car here or the bus or whatever it
13 is are, they're derivative of the scope of the contract in the
14 sense that the meets and bounds of the exclusive license really
15 determine ultimately whether there is infringement here.

16 So, there are arguments both ways. I think there's
17 substantial argument and I do think that having the parties go
18 forward with discovery when there's an arbitration on the
19 contract issues would be irreparable harm in the sense that is
20 contemplated by the arbitration statute. And I find that the
21 other factors including the public interests equity weigh in
22 favor on balance of the stay. So, I am going to stay this case
23 and I'll ask for updates every six months and in any event when
24 there's any ruling or ruling from the arbitration panel for any
25 settlement.

L91AALAVC

Conference

1 All right. Thank you everyone.

2 Anything else from Mr. Cyrulnik.

3 MR. CYRULNIK: Thank you, your Honor.

4 If I could just clarify the stay is pending resolution
5 of the appeal; is that right?

6 THE COURT: That's right.

7 MR. CYRULNIK: Would your Honor consider, and I
8 haven't discussed this with Mr. Celio, so it's possible we
9 could agree on it but I just throw it out there because we have
10 the Court on the phone and we have the Court's ruling on the
11 stay issue, we would like to expedite the appeal so as to limit
12 the impact of the stay on the progress of the case as we had
13 just talked about. Is that something I guess I would ask the
14 Court if your Honor would consider considering the stay on the
15 parties applying for an expedited resolution of appeal and I
16 say that only because I haven't had a chance to confer with
17 Mr. Celio -- given his statement a few moments ago, given the
18 interest in having things resolved expeditiously, having that
19 view, he would agree to that anyway by but I want ask the
20 Court --

21 THE COURT: Let me ask Mr. Celio if he would like to
22 respond first.

23 MR. CELIO: Thank you, your Honor.

24 We absolutely want to move the Second Circuit case
25 forward as quickly as possible. It is an interesting issue.

L91AALAVC

Conference

1 It's something we would be prepared to brief quickly. I'm not
2 sure what the process is that's being put to me. We have other
3 business. We've become fast friends and speak frequently
4 because of all of these matters. I'm going to speak with him
5 later today and I am happy to talk to him later but I'd
6 certainly be very open to moving this one forward.

7 THE COURT: Why don't you confer about it and present
8 anything to me that you are unable to resolve.

9 MR. CELIO: Very good. Thank you, your Honor.

10 MR. CYRULNIK: Thank you, your Honor.

11 THE COURT: All right. Thanks, everyone.

12 (Adjourned)

13
14
15
16
17
18
19
20
21
22
23
24
25